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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/552,027	10/03/2005	Theodorus Suibertus Anthonius Rolf	P/1336-199	6889
2352 7590 08/13/2010 OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403				
EXAMINER KLAYMAN, AMIR ARIE				
ART UNIT 3711		PAPER NUMBER		
MAIL DATE 08/13/2010		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/552,027

Applicant(s)ROLF, THEODORUS SUIBERTUS
ANTHONIUS**Examiner**

AMIR KLAYMAN

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 May 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Specification

1. Examiner withdraws his objection to the specification since applicant provided the necessary corrections.

Claim Rejections - 35 USC § 103

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 82 USPQ2d 1385, 1395-97 (2007) identified a number of rationales to support a conclusion of obviousness which are consistent with the proper "functional approach" to the determination of obviousness as laid down in *Graham*. Exemplary rationales that may support a conclusion of obviousness include:

- (A) Combining prior art elements according to known methods to yield predictable results;
- (B) Simple substitution of one known element for another to obtain predictable results;
- (C) Use of known technique to improve similar devices (methods, or products) in the same way;
- (D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results;
- (E) "Obvious to try" – choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success;
- (F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art;

(G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention.

2. Claims 17-20, 22 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kushner et al US 5,795,210.

Kushner teaches toy building block in the abstract and in figs 1-14, having one stud with equally spaced teeth having rounded crests and rounded grooves (examiner construed the structure of projections **10** and **31** as one stud having rounded crests and grooves around projections **10**; see examiner's markings 1 below). Kushner's building block has a bottom recess (best seen in figs 2 and 4) with vertically side walls (including side walls **2** and tube's **20** side walls as well) having the land shaped to complementary to the stud's grooves (in fig 4, coupling positions **21** and **41**). Kushner's blocks are configured to be arranged in stacks as seen in figs 5 and 6 (i.e. a stud (as construed by the examiner as discussed above) of one block will be guided into a recess of another block). Kushner is silent regarding the fact that the stud's height is at least about 30% of the block's height.

Examiner notes that the court had decided that "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). What is the difference in critically between a stud's height that is at least 25% or 35% of the block's height than as claimed? One of ordinary skilled in

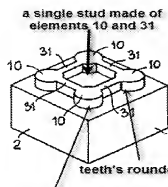
Art Unit: 3711

the art would have been able to form applicant invention without any prior knowledge of this specific height of the stud.

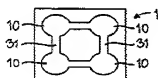
Therefore, It would have been obvious at the time the invention was made to one of ordinary skill in the art to provide Kushner's stud's height to be at least 30% of the block's height for the reason that a skilled artisan would have been motivated to optimize the stud's height in order to provide the best secured position between one block to another while the blocks are secured using one block's stud inserted into another block's recess.

Examiner's marking 1

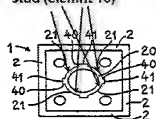
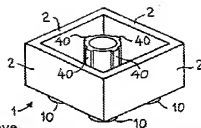
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teeth's rounded crest



four vertically extending lands shaped 21 complementary to the rounds grooves of the stud (element 10)



As per claim 17, Kushner discloses a toy building block, in figs 1-14, comprising:
a top surface of the block having one stud (construed as projections **10** and **31** as a single structure) with a plurality of circular arranged substantially equally spaced teeth (construed as projections **10**) in figs 1 and 3; the teeth (**10**) having rounded crests and grooves (see examiner's markings 1 above);

a bottom recess surface (see in column 3, lines 30-33, the block's bottom is hollow, i.e. a recess) having sidewalls (as discussed above examiner consider walls **2** as well as the tube's **20** walls as the sidewalls as recited. Examiner relies on the dictionary definition of the term "sidewall", which is a wall that serves as the side of a structure. The outer walls of tube **20** are the side of its structure and therefore are consider as sidewalls); wherein the recesses shaped in away so that a stud is guided by at least three zones of contact (construed as coupling points **21** and **41**) as seen in figs 2 and 4.

With respect to the function of one block's stud being guided into a recess of another block to create a stack assembly, see figs 5 and 6 as well as Kushner discussion in column 3, line 25 to column 4 line 11.

As per claim 18, see examiner's markings 1 above regarding the recess has at least three (wherein Kushner having four) vertically extending land shaped to fit with the

rounded grooves of the stud (projections' **10** rounded grooves (as marked above) are fitting/snagging with coupling points **21**).

As per claim 19, Kushner's walls **2** and tube's **20** walls lands, are constitute the majority of contact zones for guiding a stud into a recess as best see in figs 2, 4, and 5.

As per claim 20, examiner construed Kushner's four projections teeth as a stud having a rotational symmetry of 4 fold.

As per claim 22, Kushner's block is cuboid units as seen in figs 1 and 2; and as discussed above, each unit has one stud and one recess. Examiner gives the broadest reasonable interpretation of the term cuboid (i.e. cubic form) according to the dictionary. The definition of the term "cubic" is having three dimensions; solid. Thus, according the dictionary, Kushner's building block is cuboid unit.

As per claim 25, Kushner's block has a hollow bottom portion as discussed in column 3, lines 29-33. Although Kushner is silent regarding the process of manufacturing his blocks, examiner notes that it has been held that even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even

though the prior product was made by a different process. See *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

3. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kushner et al US 5,795,210 as applied to the claims above, and further in view of Bretting US 3,487,579 and Orgass et al US 4,582,495.

As per claim 21, Kushner is silent regarding his stud having a rotational symmetry of 6, 8, or 12 fold.

In the field of building blocks and toy building blocks Bretting teaches a projecting frame **16** extending above area **15** (as seen in fig 2 and discussed in column 2, lines 62-72) having a rotational symmetry of 6 fold. Orgass teaches pegs **6** having a rotational symmetry of 12 fold in figs 1-2 (see in column 3, lines 36-41, wherein peg **6** having twelve grooves **7**). Examiner construed Bretting's extending frame and Orgass's peg as studs according to a dictionary definition. The dictionary defines a stud as being any of various projecting pins, lugs, or the like, on machines or other implements. Accordingly Bretting and Orgass projection elements are consider as studs.

It would have been obvious at the time the invention was made to one of ordinary skill in the art to from Kushner's stud rotational symmetry of 4 fold as a rotational symmetry of 6 fold or 12 fold as taught by Bretting and Orgass, respectfully, for the reason that a skilled artisan would have been motivated in using a known technique (Bretting and Orgass studs having a rotational symmetry) to improve a similar devices

(Kushner's building block) in the same way (providing a stud that has a rotational symmetry) to obtain the predictable results of forming a stud on a block's top surface to be fit in a snagging manner within a recess of another block.

With respect to the stud has a rotational symmetry of 8 fold , examiner notes that the Federal Courts have held that the that the particular configuration of the object is nothing more than one of numerous configurations a person of ordinary skill in the art would find obvious as a matter of users preference or design choice. See *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1976) (See MPEP 2144.03). Forming Kushner's stud rotational symmetry with 6, 8, or 12 folds would have not changed the function of Kushner's stud as being an element upon a block's top surface intended to be inset within an opening of another block (i.e. recess) in order to fit in snagging secure manner. Thus, it would have been obvious at the time the invention was made to one of ordinary skill in the art to provide Kushner's stud a rotational symmetry as 8 fold, for the reason that a skilled artisan would have been motivated as a design choice or user's preference.

4. Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kushner et al US 5,795,210 as applied to the claims above, and further in view of Simmons et al US 6,088,987.

As per claim 23, Kushner does not disclose that the stud and the recess having a pass-through hole through.

In the field of building blocks being capable to be formed in a miniature embodiments such as in LEGO (in column 6, lines 15-25), Simmons teaches a building block (module **13**) having a stud (construed as tenons **18**) and recess (construed as mortises **19**) with a pass-through hole as discussed in column 5, lines 9-39 (see also fig 8b, regarding the pass through hole extending from top to bottom of the block).

It would have been obvious at the time the invention was made to one of ordinary skill in the art to provide Kushner's block with a pass-through hole as taught by Simmons for the reason that a skilled artisan would have been motivated in applying a known technique (Simmons's block having a pass-through hole extending from top to bottom of the block) to a known device (Kushner's toy building block) ready for improvement to obtain the predictable results of providing more security degree to the blocks formation by constructing a pass through hole within the block so a fastening element can pass there-thorough (as seen in Simmons's fig 4) and therefore securing one block to another not only by the stud fitting within the recess but with an additional an external fastening element/s.

As per claim 24, as seen in Simmons's fig 8b, the stud (tenon **18**) has a pass-through hole; also Simmons's stud is provided with an enlargement area thereon to receive retainer **32** and threaded rod **35** with nut and washer **36** as best seen in figs 4 and 6.

5. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kushner et al US 5,795,210 as applied to claim 17 above, and further in view of De Pieri et al US 5,471,808.

As per claim 26, Kushner does not disclose slots for holding edges of construction devices.

In the field of building blocks, Pieri teaches a block **1** having a lateral outer face (see examiner's markings 2 below) having edges (i.e. slots) **21, 25, 22, 24** to accommodate frame construction framework **23** (i.e. a construction device's edges) in fig 3.

It would have been obvious at the time the invention was made to one of ordinary skill in the art to provide Kushner's block with slots to hold a construction device thereon for the reason that a skilled artisan would have been motivated in applying a known technique (Pieri's block having slots for holding a construction device) to a known device (Kushner's building block) ready for improvement to obtain the predictable results of forming a block with slots capable of holding construction devices as taught by Pieri.

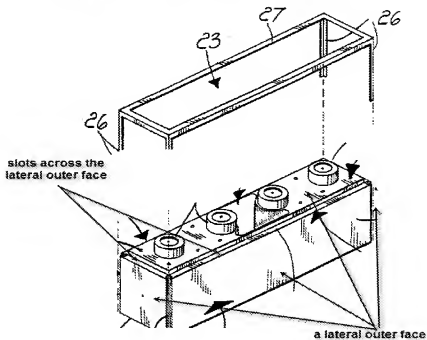
Examiner's markings 2

U.S. Patent

Dec. 5, 1995

Sheet 2 of 4

5,471,808



6. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kushner et al US 5,795,210 as applied to claim 17 above, and further in view of Garpow US 6,506,091.

As per claim 27, Kushner is silent regarding a bivalent block having at least one recess on the top and bottom surfaces and that the stud is about double the length of the recess.

In the field of toy building blocks, Garpow teaches a bivalent block **10** with at least one recess on the top and bottom surfaces (recess **47**) and male connectors (i.e. studs) **40**, **50**, and **60** in fig 3; fig 5 shows the use of the studs to be inserted in the recesses of another bivalent block. Examiner notes that it has been held that the use of a one piece construction instead of the use of separable elements would be merely a matter of obvious engineering choice. See In re Larson, 340 F.2d 965, 968, 144 USPQ 347, 349 (CCPA 1965).

Therefore, it would have been obvious at the time the invention was made to one of ordinary skill in the art to make the stud separable in Kushner for the reason that making parts separable would be merely a matter of obvious engineering choice where a skilled artisan would have been motivated to choose to make an integral part into a plurality of separate parts. As taught by Garpow making the stud separate but with a threaded area to be inserted into the block, does not change the function of the stud to be snagged-fit with a recess of another block. In other words, Garpow teaches the concept of a bivalent building block, wherein the stud can be construct as a separate

part but with the ability to be insert into the block using a thread surface and to be used as a "conventional stud" (i.e. capable to be insert within a recess of another block).

With respect to the stud being double length of the recess, as discussed above, the examiner notes that it has been held that claims which fall within the broad scope of the references are unpatentable there over because, among other reasons, there is no evidence of the criticality of the claimed ranges of weight or proportions; see In re Hoeschele, 406 F.2d 1403, 160 USPQ 809(CCPA 1969). Applicant needs to provide evidence that the stud must be double its size (double the recess's size) in order to critically form applicant's invention. What distinguishes a stud that is double its size from a stud that is less than double its length or more than a double its length (double than the recess's length)?

7. Claims 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kushner et al US 5,795,210 and Simmons et al US 6,088,987 as applied to claim 23 above, and further in view of Lindenmeyer US 2,609,638.

As per claims 28, Simmons discloses a screw (construed as threaded rod **35**) having a threaded body in figs 3-4. However the combination Kushner and Simmons is silent regarding a screw having a second inner thread in the screw's head.

In the field of toy connectors, Lindenmeyer teaches a screw (studs **22** and **22'**) having a first thread (**13**) on the screw's body within its terminal section and second

inner thread (18") in the screw's head in figs 7 and 16; see also figs 14-15 and column 5, lines 18-36.

It would have been obvious at the time the invention was made to one of ordinary skill in the art to substitute the modified Kushner's fastening element (as taught by Simmons, i.e. threaded rod 35 and nut & bolt 36) with Lindenmeyer's screw type, for the reason that a skilled artisan would have been motivated in providing a simple substitution for one known element (Simmons's fastening elements) for another (Lindenmeyer's fastening element as a screw type element) to obtain the predictable results of fastening one building block to another one using well known fastening means.

As per claim 29, as discussed above, the modified Kushner would have had a screw with a first thread on the screw's body (as taught by Simmons) and second inner thread in the screw's head (as taught by Lindenmeyer). Furthermore, the modified Kushner building block would have had a hole passing through the stud and the recess (as taught by Simmons) to receive a fastening element (i.e. a screw). Examiner construed Lindenmeyer's screw's head to have a recess thereon having a cross-section of regularly arranged, inwardly directed crests separated by generally circle shaped grooves as seen in figs 7, 16 and in figs 14-15 (see also column 5, lines 18-36).

With respect to screw's head is configured to receive a tool there-within, examiner notes while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of

structure rather than function. In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429,1431-32 (Fed. Cir. 1997). “[A]pparatus claims cover what a device is, not what a device does.” Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990). The modified Kushner's structure is fully capable of performing the same function as claimed, since his device is equipped with the same features as the claim subject matter.

As per claim 30, Kushner discloses cross-section of the recess in the head has at least four crests in fig 1 (see examiner's markings 1 above).

8. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable Kushner et al US 5,795,210, Simmons et al US 6,088,987 and Lindenmeyer US 2,609,638 as applied to claim 28 above, and further in view of Deahr US 5,498,188.

As per claim 31, the modified Kushner is silent regarding a screwdriver tool.

In the field of toy building structure, Deahr teaches a toy building structure **10** in fig 1 and a screwdriver **124** in fig 4. It would have been obvious at the time the invention was made to one of ordinary skill in the art to provide the modified Kushner a screwdriver tool as taught by Deahr to obtain the predictable results of using a well known screwdriver tool to insert and fasten a screw within a threaded hole, thus to secure the connection of one block to the another.

9. Claims 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kushner et al US 5,795,210 in view of Simmons et al US 6,088,987 as applied to claim 23 above, and further in view of Garpow US 6,506,091.

As per claim 32, the combination Kushner & Simmons does not disclose the use of a threaded section within the pass-through hole.

In the field of toy building blocks, Garpow teaches a threaded section **46** (i.e. pass-through hole with threaded surface) as shown in fig 3.

It would have been obvious at the time the invention was made to one of ordinary skill in the art to provide Kushner & Simmons's pass-through hole with a threaded section thereof as taught by Garpow for the reason that a skilled artisan would have been motivated to use a known technique (Garpow's pass-through threaded hole) to improve similar devices (Kushner & Simmons's building block) in the same way (having a block with a pass-through hole) to obtain the predictable results of forming a pass-through hole within a building block in order to insert a fastening element there-through and therefore securing building blocks one to another.

As per claim 33, as seen in Simmons's fig 8b, the stud (tenon **18**) has a pass-through hole; also Simmons's stud is provided with an enlargement area thereon to receive retainer **32** and threaded rod **35** with nut and washer **36** as best seen in fig 4.

10. Claims 34 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kushner et al US 5,795,21, Simmons et al US 6,088,987, and Lindenmeyer US 2,609,638 as applied to claim 28 above, and further in view of Garpow US 6,506,091.

As per claim 34, the modified Kushner, within the reference to Lindenmeyer, teaches a screw (studs **22** and **22'**) having a first thread (**13**) on the screw's body within its terminal section and second inner thread (**18''**) in the screw's head as seen in Lindenmeyer's figs 7 and 16. The modified Kushner is silent regarding a threaded pass-through hole.

As discussed in claims 32-33 above, Garpow teaches a threaded pass-through hole **46** within a building block as seen in fig 3.

It would have been obvious at the time the invention was made to one of ordinary skill in the art to provide Kushner, Lindenmeyer, and Simmons's pass-through hole with a threaded section thereof as taught by Garpow for the reason that a skilled artisan would have been motivated to use a known technique (Garpow's pass-through threaded hole) to improve a similar devices (Kushner & Simmons's building block) in the same way (having a block with a pass-through hole) to obtain the predictable results of forming a pass-through hole within a building block in order to insert a fastening element there-through and therefore securing building blocks one to another. The modified Kushner would have had a threaded pass-through hole (as taught by Garpow) having a fastening screw having a treaded head (as taught by Lindenmeyer), wherein the screw's

treaded head (i.e. the first threaded head) is smaller than the screw's body (i.e. the fourth threaded head).

As per claim 35, examiner construed Lindenmeyer's screw's had to have a recess thereon having a cross-section of regularly arranged, inwardly directed crests separated by generally circle shaped grooves as seen in figs 7,16 and in figs 14-15 (see also column 5, lines 18-36). With respect to screw's had is configured to receive a tool there-within, examiner notes while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429,1431-32 (Fed. Cir. 1997). "[A]pparatus claims cover what a device is, not what a device does." Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990). The modified Kushner's structure is fully capable of performing the same function as claimed, since his device is equipped with the same features as the claim subject matter.

Response to Arguments

11. Applicant's arguments with respect to claim17-36 have been considered but are moot in view of the new ground(s) of rejection.
12. With respect to applicant's arguments regarding the reference to Pieri is not a toy building block as applicant, examiner notes that a preamble (which recites applicant's

invention as being a toy building block) is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). See examiner discussion in claim 26 above regarding the examiner interpretation of Pieri having slots across a lateral face of the block.

13. Regarding applicant's arguments that applicant provided evidence of the criticality of the claim ranges, with respect to claim 27, examiner respectfully disagrees.

Applicant stating that his specification clearly defines the criticality of the ranges by pointing out to original claim 11 and fig 14 (in applicant's remarks page 13 with respect to claim 27). No where in original claim 11 or in fig 14 applicant provide any evidence (emphasis) of the criticality of the claim ranges; merely stating that "the **preferred** length--" is not an evidence; reciting something to be "preferred" by itself is not an evidence.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AMIR KLAYMAN whose telephone number is (571)270-7131. The examiner can normally be reached on Mo. - Fr. (7:30AM-5:00PM). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene KIM can be reached on (571) 272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO

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Customer Service Representative or access to the automated information system, call
800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/AK/

8/11/10

/Gene Kim/

Supervisory Patent Examiner, Art Unit 3711